

REMARKS

The following remarks and the above amendments are submitted to address all issues in this case, and to put this case in condition for allowance. Amendments are made solely to better define the subject matter of the present invention. These amendments are supported by the disclosure of the application as filed and are believed to provide no new subject matter. After the above amendments, application claims 1-5, 7-17, 20-27, 30-40, 43, and 45-48 are pending in the application. Applicant's claims 6, 18, and 28-29 are withdrawn. Application claims 1, 27, 30, 31, 32, 33, 34, 35, 40, 43, 45, and 46 are independent claims.

Applicants have studied the Office Action mailed August 19, 2008 and have the following remarks.

35 U.S.C. § 112

The Examiner rejected claims 1-5, 7-17, 20-27, 30-33, 35-39, and 45-48 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Examiner asserts that the claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Without admission as to the correctness of the Examiner's rejections, independent claims 1, 27, 30, 32, 33, 35, 45, and 46, have been amended to recite that the respiratory tube has a distal end passing through the rear portion of the positioning shield, which as the Examiner points out is clearly supported by the specification as filed and moots the Examiner's rejection. As the remaining claims

depend from one of these independent claims, it is believed that claims 1-5, 20-27, 30-33, 35-39, and 45-48 now meet the requirements of 35 USC § 112, first paragraph.

As claims 1-5, 20-27, 30-33, 35-39 and 45-48 only stand rejected in light of this section, these claims are now believed to be allowable and the Examiner is respectfully requested to withdraw his rejections thereto.

35 U.S.C. § 102

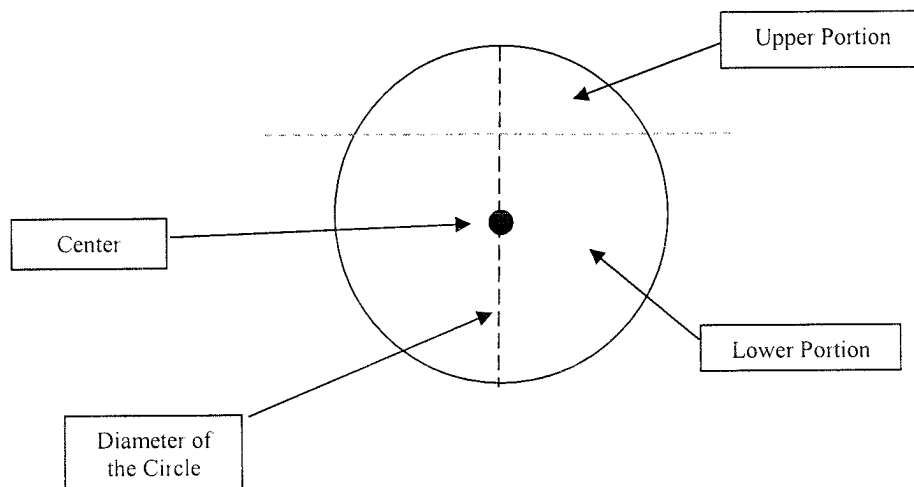
The Examiner rejected claims 40 and 43 as anticipated by Brain (US 5,355,879) and claims 34, and 41-42 as anticipated by Pagan (US 6,240,922). Without admission as to the correctness of these rejections, claims 41-42 have been cancelled from the application. Applicant respectfully traverses the rejections of claims 34, 40 and 43.

Brain

Claim 43

The Examiner asserts that Brain discloses a laryngeal mask having a distal lumen, wherein the distal lumen is a circular lumen, which can have an upper portion and a lower portion, and which still is smaller than the diameter of the tube adapter at the proximal end. The Examiner further asserts that the distal lumen can be divided into asymmetrical halves so that the upper portion can have a diameter different from the lower portion. As the circular lumen of Brain can be sectioned off to an upper portion and a lower portion, wherein the upper portion has a diameter that is different from the lower portion, the Examiner argues that Brain anticipates the “keyhole” shaped distal lumen of Applicant’s claims.

The Examiner is mistaken in his assertion that the distal lumen of Brain can be divided into asymmetrical halves with the upper portion having a diameter different from the lower portion. The diameter of a circle is the length of a line segment joining two points on a circle and *passing through the center*. See BARRON'S DICTIONARY OF MATHEMATIC TERMS, 93 (2nd ed. 1995). A diameter must pass through the center point of the circle. Accordingly, even dividing the distal lumen of Brain, in accordance with the Examiner's segmented line, into an upper and a lower portion will not produce two different *diameters* as the *diameter* must pass through the center point of the circle. As illustrated in the below diagram, the Examiner's hypothetical "diameters" are not, in fact, diameters as no line joining two points in the Examiner's upper portion could pass through the center point of the circle as the true diameter illustrated in the diagram below. Regardless of how a circle is divided, the diameter of the circle remains constant.



However, simply for the sake of better defining the Applicant's claims, and without regard to the correctness of the Examiner's rejections, Applicant has amended

claim 43 to specifically recite that the portions form a “keyhole” shape as identified in Applicant’s specification and Figure 6 of the present application. As the distal lumen of Brain is missing this element, it cannot anticipate Applicant’s claim 43.

Claim 40

With regards to claim 40, the Examiner asserts that Brain discloses a laryngeal mask comprising a means for alternative ventilation in the event that the endotracheal tube is obstructed. Specifically, the Examiner asserts that the evacuation tube (51) of Brain is capable of providing an alternate means of ventilation.

Applicant respectfully traverses this rejection as the evacuation tube of Brain does not connect to the trachea of the patient, but rather the esophagus. The evacuation tube of Brain is adapted “to provide sealed and exclusive communication with the upper sphinctral region of the esophagus.” *See* col. 4, lns 29-31. Furthermore, the evacuation tube of Brain extends alongside, but does not connect to, the airway tube of Brain. *See* col. 4, lns 20-25. As such, Brain’s evacuation tube is not inserted into the patient’s tracheal airway nor does it connect to the airway of the mask. Accordingly, the evacuation tube of Brain *can not* provide an alternative means of ventilation as it has no connection to the patient’s airway while the laryngeal mask is in place in a patient. As the evacuation tube of Brain can not provide such an alternate means of ventilation, Brain is missing this element and can not anticipate Applicant’s claim 40.

Pagan

The Examiner asserts that Pagan teaches a laryngeal mask comprising horizontal runners that are viewed as a means for elevating an epiglottis, which surrounds a portion

of the perimeter of the lumen and does not obstruct the lumen. Applicant respectfully traverses this rejection and contends the runners of Pagan do not surround a portion of the perimeter and do obstruct the lumen formed by the distal end of the respiratory tube.

The horizontal runners of the Pagan project down from the roof recess, extending laterally across the only central part of the mount member. Col. 4, lns 53-60. The horizontal runners, or ribs, project down about half the distance between the roof and the forward surface. As such, the horizontal runners of Pagan do not surround a portion of the perimeter of the lumen (defined as the mount member in Pagan), but rather are located *inside* the mount member, extending down from the roof. Further, the horizontal runners of Pagan do obstruct the lumen since they extend within the lumen. This obstruction is clearly illustrated in Pagan's Figure 2. Pagan does not show the element of a means for elevating an epiglottis in which the means surrounds at least a portion of the perimeter of the lumen and does not obstruct the lumen. As Pagan is missing these elements, it can not anticipate Applicant's claim 34.

The Examiner further asserts that the runners are a means for inhibiting foreign matter. Without regard as to the correctness of the Examiner's rejections, claims 41-42 have been cancelled mooted the Examiner's rejections.

Conclusion

In light of the above, Applicant respectfully contends that the pending claims are patentable over the cited art and requests entrance of the above amendments and allowance of all pending claims so that this case can pass on to issue.

This response is provided in conjunction with a Request for Continued Examination (RCE) and the requisite fee. As a final point, it is believed no other fees are due in conjunction with this filing; however, the Commissioner is authorized to credit any overpayment or charge and deficiencies necessary for entering this amendment, including any claims fees and/or extension fees to/from our **Deposit Account No. 50-0975**.

Respectfully submitted,
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